SUPREME COURT, U. S. MOTION FILED
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

70-47

No. [redacted]

FLORENCE DIFFENDERFER and NISHAN PAUL,

*Appellants,*

*v.*

CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, INCORPORATED, a non-profit Florida corporation; DADE COUNTY, FLORIDA, a political subdivision of the State of Florida; PORTER W. HOMER, County Manager; R. K. OVERSTREET, Tax Collector of Metropolitan Dade County, Florida; and FRED O. DICKINSON, JR., as Comptroller of the State of Florida,

*Appellees.*

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## MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

## AND

## BRIEF OF PROTESTANTS AND OTHER AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE AS *AMICUS CURIAE*

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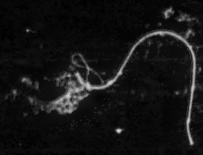

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## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Protestants and Other Americans United hereby respectfully moves leave to file the accompanying brief *amicus curiae* in this case in support of appellant as provided in Rule 42 of the rules of this Court. Permission to file this brief has been requested of both parties and granted by appellants.

Protestants and Other Americans United for Separation of Church and State is a nonprofit educational organization organized under the laws of the District of Columbia.

Protestants and Other Americans United is interested in the Separation of Church and State. The function of this

*amicus curiae* is to present additional legal authorities for consideration by this Court in this important litigation.

The attached brief is submitted in the hope that it will assist the Court in its deliberations. For the foregoing reasons, the *amicus curiae* respectfully requests that this motion be granted.

Respectfully submitted,

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## BRIEF OF PROTESTANTS AND OTHER AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE AS AMICUS CURIAE

### INTEREST OF AMICUS

Protestants and Other Americans United for Separation of Church and State is a nonprofit educational corporation organized under the laws of the District of Columbia with national headquarters in the Washington, D.C. area, with some 100,000 members in all the states of the United States. Its sole chartered purpose is to preserve the principle of separation of church and state as set forth in the First Amendment to the Constitution of the United States

and in the constitutions of the several states, and to assist in the preservation of constitutional rights respecting this principle to the end of preserving religious liberty for the people of the United States.

Protestants and Other Americans United for Separation of Church and State, popularly known as "Americans United" has members and "Scroll" (supporting) churches in the State of Florida and is especially concerned over new developments in the state which raise questions of possible infringement of the religious clauses of the First Amendment and the Constitution of the United States. The Central Baptist Church of Miami, Florida, an appellee in this case, is a supporting member of Americans United being a "Scroll Church" which indicates that it is a church dedicated to the principle of separation of church and state.

Americans United admires and supports the great work of the Central Baptist Church, but it reluctantly must argue for a position contrary to that taken, quite sincerely, by its own member church. Americans United considers itself an arm of that church in fighting for the principle of separation of church and state, but reserves the right to differ when an important legal principle is at stake. It is not in hostility to the Central Baptist Church or any church, but mindful of the great benefit of all churches of the principle of the separation of church and state, that we file this brief *amicus* to assist this court in preserving sound church-state relations under law in this country.

As the Maryland Court of Appeals said in the *Horace Mann League v. Board of Public Works*, 242 Md. 645, 220 A.2d 51 (1966):

> "It should be noted at the outset that nothing in this opinion is intended as a criticism of, or a boost to, any religion, sect, or schism, or lack of relition. Our task is to decide a constitutional issue. We proceed to do just that, and that alone."

## STATUTE INVOLVED

F.S. 192.06 (3) and (4) as interpreted by *Central Baptist Church of Miami, Florida, Incorporated v. Dade County, Florida,* 216 So. 2d 4.

## QUESTION PRESENTED

Whether the First and Fourteenth Amendments to the United States Constitution forbid a state to exempt from taxation real property owned by a church used primarily for commercial business purposes.

## STATEMENT OF THE CASE

This action was brought by a group of citizens and taxpayers of Dade County, Florida who sought a declaration that an Act of the Florida legislature cited as F.S. § 192.06 (3) and (4) is unconstitutional as tending to establish religion and to inhibit the free exercise of religion in violation of the First and Fourteenth Amendments to the United States Constitution insofar as the Act authorizes tax exemption of church property used as a commercial parking lot. Plaintiffs also sought an injunction requiring the Dade County tax collector to assess and collect taxes on the church parking lot.

A three-judge federal panel was convened and the case was submitted on a Stipulation of Facts and a Motion for Summary Judgment. A three-judge federal panel on August 21, 1970, on the basis of *Walz v. Tax Commission* (397 U.S. 644 (1970), held that a state may exempt from taxation commercial properties owned and operated by churches. The court held that the Central Baptist Church's real property here involved is utilized six days a week as a commercial parking lot, the income from which is used for church or religious purposes. This property, it held, could be constitutionally exempted from taxes by the State of Florida.

## SUMMARY OF ARGUMENT

This Court recently held in *Walz v. Tax Commission*, 397 U.S. 644 (1970) that real property owned by churches and used for worship function purposes may be exempted from taxation without violence to the Establishment Clause of the First Amendment. It was not held that real property owned by churches and used for commercial purposes may be so exempted. In fact, Mr. Chief Justice Burger noted that in *Gibbons v. District of Columbia*, 116 U.S. 404 (1886) Congress denied tax exemption to land owned by, but not used for, a church [for worship function purposes] "but rather to produce income." It is clear that this court regards worship function properties and commercial properties of churches as being in two separate categories—one may be taxed, the other may be exempted. The problem of taxation of the commercial properties of churches was not before the court in *Walz*, only properties used exclusively for religious purposes.

Properties used exclusively for religious purposes are but a small fraction of the tax-exempt burden on the working citizens. Such property, unavoidably, is needed in relatively modest amounts to carry on the identifying function of churches—their relationship of people with God. The problem of exemption or taxation of churches was not considered when the principle of church and state was being engrafted into our constitutional system by the drafters of the religious clauses of the First Amendment. Tax exemption for churches was not only not discussed, but, in fact, the problem was how to eliminate tax support for the churches.

Until the Federal Constitution was amended in 1791, the "State had the power to levy taxes for any public purpose, both to raise revenue and to regulate activities. If the "State" desired to tax the property of churches designed and used exclusively for religious purposes it could have done so. At that time in our nation's history, it was more likely that governments were using taxes to support religion

than to tax churches for revenue or control. After the First Amendment was adopted in 1791 and extended to the States by the Fourteenth Amendment adopted in 1868, it was clear that it was no longer a constitutionally legitimate end of government to either help or hinder churches in their religious functions. A new constitutional principle called, by Thomas Jefferson the separation of church and state, became the law of the land—a fundamental part of our political structure.

To summarize the argument presented in this brief, we believe that if the drafters of the religious clauses of the First Amendment were sitting as this Court, with all the information now available on the relationship of church and state, they would have accepted two basic principles concerning church taxation as being compatible with the plan envisioned by their amendments to the Constitution:

(1) Real property owned by religious organizations used exclusively for religious purposes and other property designed and used exclusively for religious purposes are exempt as a matter of right from taxation by virtue of the "free exercise" clause of the First Amendment as extended to the States by the Fourteenth Amendment of the United States Constitution.

(2) Real property owned by religious organizations and not used exclusively for religious purposes and other property not designed and not used exclusively for religious purposes are not exempt and cannot be exempted from such taxation as is imposed on similar property under similar circumstances owned and used by secular organizations by virtue of the Establishment Clause of the First Amendment as extended to the States by the Fourteenth Amendment of the United States Constitution.

The first principle having to do with the worship function properties of churches and religious organizations was adopted by the Court in *Walz v. The Tax Commission* (supra) which accepted *permissive* tax exemption for worship

function properties. The second principle will be settled in this litigation by this Court.

Thomas Jefferson and James Madison today would be truly proud of the religious peace which pervades this great land based on their work and the efforts of many others which resulted in the fundamental principle of separation of church and state being made a part of the Constitution of the United States. The riotous conduct of sectarians in Ireland today gives raucous witness that the evils which the principle of separation of church and state helps us avoid are relevant to contemporary society and that we deal with no academic abstraction. This Court here has another opportunity to clarify and preserve the constitutional basis of our religious freedom, which it has maintained so well, so far.

## ARGUMENT

**(1) REAL PROPERTY OWNED BY RELIGIOUS ORGANIZATIONS AND NOT USED EXCLUSIVELY FOR RELIGIOUS PURPOSES AND OTHER PROPERTY NOT DESIGNED AND NOT USED EXCLUSIVELY FOR RELIGIOUS PURPOSES ARE NOT EXEMPT AND CANNOT BE EXEMPTED FROM SUCH TAXATION AS IS IMPOSED ON SIMILAR PROPERTY UNDER SIMILAR CIRCUMSTANCES OWNED AND USED BY SECULAR ORGANIZATIONS BY VIRTUE OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT AS EXTENDED TO STATES BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.**

On September 25, 1789, Congress proposed twelve articles of amendment to the Constitution of the United States. Except for the first two, they were ratified by the required number of States by December 15, 1791. These first ten amendments have since been known as the Bill of Rights.

The original congressional resolution stated: "The Conventions of a number of the States, having at the time of their Adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: . . .

> ". . .—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

These clauses are part of the "Bill of Rights". They have been explained in many opinions decided in this Court—the most notable of which is *Everson v. Board of Education,* 330 U.S. 1 (1947) where the general meaning of the Establishment Clause was clarified.

The restrictive clauses—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." are the accepted limitations on Government power with which we are here concerned.

Limitations on the power of the State to legislate on certain subjects characterize a limitarian form of government. No such restraints hobble a totalitarian state.

One of the results of the Civil War was that these clauses, which were originally only a restraint upon Congress, were extended to limit the power of the state legislatures. *School District of Abington Township v. Schempp,* 374 U.S. 203, and cases cited therein; *Murdock v. Pennsylvania,* 319 U.S. 105, 108; *Everson v. Board of Education,* 330 U.S. 1; *Zorach v. Clauson,* 343 U.S. 306; *McGowan v. Maryland,* 366 U.S. 420; *Torcaso v. Watkins,* 367 U.S. 488; and *Engel v. Vitale,* 370 U.S. 421.

It must be kept in mind that something new was added to political science by the religious liberty clauses of the First Amendment—namely, a principle which in the shorthand of popular parlance is called the separation of Church

and State. For most of the history of mankind the Church and the State have been linked together, not separate institutions. The distinguishing function of any State is that it regulates the relationships between persons and persons, and persons and things in the area over which its power extends and over the subject matter where it has jurisdiction. Where in a country the existence of "God" is accepted—and this has been almost everywhere save in today's Communist empires—there is recognized a relationship of person to person and person to things and to "God." To some this is the most important relationship of all.

Since a State seldom if ever taxed itself or its parts, it followed that early Governments did not tax religious properties. While in North America, the Church and the State were, in many ways, still partners, tax exemption of property used for religious purposes was taken for granted. (Cf. *All Saints Parish v. Inhabitants of the Town of Brookline* (178 Mass 404, 59 N.E. 1003 (1901)). In fact, tax support for religious functions was the rule rather than the exception. (Cf. Maryland, 1692, "An act for the Service of Almighty God and the establishment of the Protestant Religion within this Province.") In Pfeffer on *Church, State and Freedom*, at page 184, it is stated:

> "The universality of the exemption of church property from taxes in the United States is hardly open to doubt; constitutional or statutory provision for such exemption exists today in all states as well as in the District of Columbia. Churches, other houses of worship, and the land on which they stand are everywhere freed from tax levies, as is personal property devoted to religious uses." (Cf. also, *General Finance Corporation v. Archetto*, 93 R.I. 392, 176 A.2d 73 (1961) at p. 77).

Although one would expect that the constitutional basis for continuing the tax exemption of property used exclusively for religious purposes would have been thrashed out by our contentious ancestors at the time they separated Church and State at the federal level, a recent book, *"Should*

*Churches Be Taxed?"* by D.B. Robertson, points out the poverty of source material on this important subject.

> "There is nothing in the Federal Constitution of 1787 which grants tax exemption. There is nothing in the U.S. Constitution today which forbids the taxing of the property or income of religious groups, though there are those who think that exemption is implicit in the 'free exercise' clause of the First Amendment. It is significant that one finds no single reference to the question of tax status of church property in discussions of religion and the adoption of the religious clauses of the First Amendment. Even Madison, who entered a protesting note on what he had heard about proposals in Kentucky to exempt church property, does not seem to have raised the issue in his efforts in favor of the adoption of the religious clauses of the First Amendment .... One wonders, however, why the records show no single protest on the point of tax exemption for churches in the debates on the First Amendment. One must assume, as many commentators suggest, that even though our founding fathers were not necessarily overly pious men, they saw the social benefits of a 'free religion' and they assumed (in the absence of obvious signs to the contrary) that the American people approved the continued tax-exempt status of the various religious groups on a nonpreferential basis. They were, in other words pro-religious, if anticlerical or anti-ecclesiastical." (pp. 69-70)

In his book *The Folklore of Philanthropy* (1959), John Barzum throws a little folklore of his own:

> "It was the Founding Fathers—the men of letters who wrote the Declaration of Independence and the Federalist Papers—who laid it down as axiomatic that schools, churches, and other institutions for welfare should be tax-free. They fastened the custom upon us like an immemorial law." (p. 178)

The fact of tax exemption for the religious activities of churches has universally been taken for granted. President Ulysses S. Grant in recommending in his "State of the Union" message of December 7, 1875 that the Federal Constitution be amended to make church real properties subject to taxation obviously took for granted that the Constitution somehow prohibited such taxation. He recommended that all church properties be taxed except "only the last resting place of the dead, and possibly, with proper restrictions, church edifices." Similarly *Corpus Juris Secundum* reveals no questioning of the practice of state courts exempting the real estate of religious institutions from taxation especially where the exemption is spelled out in state constitutions and statutues. (84 C.J.S. 289-291). Arvo Van Alstyne in *Tax Exemption of Church Property*, 20 Ohio St., L.J. 461 (1959) points out:

> "Despite differences of emphasis, shortcomings of statutory language and unnecessarily voluminous litigation, it is evident that the policy of exempting church property from taxation is firmly rooted in American law."

Claude W. Stimson in his article *Exemption of Property from Taxation in the United States*, 18 Minn. Law Review 411 (1933-34), suggests that the "tradition" of tax exemption for churches comes from the fact that historically churches were public institutions not only exempt from taxes but actually supported by taxes.

> "A perusal of the history of tax exemption indicates that the granting of tax immunity to ecclesiastical and military property is probably as old as the institution of taxation. Church property, for example, was exempted under the doctrine that it ceased to be under human control when it was devoted to God. English history of the eleventh and twelfth centuries contains examples of ecclesiastical and military exemption as an accepted part of the tax systems.... The exemption of church and military property was handed down as a tradition, one of the many that the American colonists transplanted from

> Europe. The established colonial churches, in most cases, were public institutions supported from the government treasury." (p. 416)

This Court in *Walz* (1970)—almost one hundred years after President Grant grappled with the problem, put to rest the questions of the constitutionality of statutes granting tax exemption to "church buildings and ground actually occupied by such buildings." Previously, in *Gibbons v. District of Columbia,* 116 U.S. 404, 406 (1886), this Court held taxable real property owned by a church in the City of Washington and not used exclusively for religious purposes. The Court in language anticipating *Walz* (supra) pointed out:

> "Upon the construction most favorable to the appellant, these statutes exempt nothing from taxation beyond church buildings and grounds actually occupied for such buildings, and the lands or grounds appurtenant to any such building, so far as reasonably needed and actually used for its convenient enjoyment for its legitimate purpose. Even parts of the exempted buildings and lands, if used to secure a rent or income, or for any business purpose, are taxable. *But land which is neither actually occupied for a church building, nor reasonably needed and actually used for the convenient enjoyment of the building as a church, is not exempt from taxation, whether it is used for any other purpose or not.*" (p. 406-407) (Emphasis added)

This opinion is clear precedent for holding unconstitutional a statute exempting from taxation real property used by churches for commercial purposes.

It is widely recognized that the provision respecting religious liberty in the Virginia Declaration of Rights of 1776 and the First Amendment to the Constitution have influenced similar provisions in almost every nation.[1]

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[1]E.G., see Dr. C.A. Dunshee de Abranches, Protecao International Dos Dirietos Humanos (Brazil, 1964), pp. 39-40.

George Neolsine in his examination of constitutional provisions and practices of European nations noted that they have followed the procedure approved of in *Walz* of exempting property used for religious worship from taxation.[2] While our Country may go beyond the scope of other nations in protecting religious liberty, what others do and understand to be proper is clearly worthy of consideration by this Court in interpreting our Constitution.

Religion is deep in the hearts of the great majority of Americans—"religion" that is—not necessarily "churches." Churches ordinarily and rightly hold real property such as church sanctuaries and personal property designed for exclusively religious purposes. Both are used in the solemn and joyful task of relating persons to God. Many churches of late have branched out into the business world and now hold extensive real property for income or expansion purposes.[3] While few will long tolerate the States' secular presence to burden or harass the free exercise of religion by taxing their rituals and sanctuaries, their prayers and blessings, many will object to tax exemption for the commercial activities of churches. Our people, through their federal and state constitutions, have chosen to leave the relationships of people to God in the hands of the individual in his home or of the like-minded in their churches and synagogues.

To the extent that the worship function requires rituals, religiously designed personal and real property, architecture, poetry and music for its accomplishment, permissive tax exemption has been made part of our constitutional law by this court in *Walz* (supra). But it is clear that this court in *Walz* refrained from deciding anything save that which was presented in that Appeal, namely, whether or not it was

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[2]George Neolsine, Fiscal Aspects of Foundations and Charitable Donations in European Countries (European Cultural Foundation, (1963) p. 21.

[3]Franklin C. Salisbury, *Speaking of Politics* (1956) p. 128.

permissible under the Establishment and Free Exercise Clause for a state statute or constitution to authorize tax exemption for the worship function properties of churches. This court did not go into the question of whether these same clauses permit or authorize a state constitution or statute to permit tax exemption for the commercial properties of churches. The court below jumped to the conclusion that since the worship function properties of churches may be tax-exempt that, a fortiorari, commercial properties may be tax-exempt. The court below believes that tax exemption for the commercial properties of churches is even more entitled to tax exemption than tax exemption for the worship function properties of churches on the odd reasoning that less aid to religion results from aid to church commerce than from aid to worship.

Chief Justice Burger in *Walz* pointed out:

> "The general principle is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." (Slip opinion p. 4)

Chief Justice Burger had previously explained that this "neutrality" insures "that no religion be sponsored or favored, none commanded, and none inhibited." While taxation of the worship function property of churches would clearly inhibit religion, taxation of the commercial properties of churches has no relevance to religion.

As a general rule is it not safe to say that there is no constitutional reason why private enterprise, and business in general, cannot be inhibited by Congress if it so desires? There are those who believe this is the general effect of most recent congressional legislative programs. There is little or no First Amendment protection for business enterprises even though they finance the exercise of First Amendment rights for everyone. Yet, business, particularly

the operation of parking lots, has done a pretty good job in this country even without such First Amendment protection. Churches, when they operate businesses, in effect desert their distinguishing function protected by the First Amendment and become involved in an unprotected operation. Why should churches be treated differently from any other parking lot operator? To exempt church commercial parking lots from taxation when similar parking lots operated by business enterprises are taxed is a form of discrimination in favor of churches which is forbidden by the religious clauses of the First and by the Fifth Amendments to the United States Constitution. Such an exemption unfairly and illegally discriminates against parking lot operators who must charge for their services to obtain funds to pay their taxes in competition with churches which do not. This probably makes the statute unconstitutional under the Fifth Amendment as well as the First!

We contend that while this Court in *Walz v. Tax Commission* (397 U.S. 644 (1970), has properly read the "free exercise clause" so as to stay the hand of the tax collector from burdening real property used for exclusively religious purposes, it is of equal importance that this Court clearly limits this exemption to strictly bona-fide religious functions. Otherwise a religious gold rush will be on cover almost everything under the term "religious" from bingo games and church business enterprises to hospitals and poorhouses.

Of course, real property is not designed as personal property usually is, and so its *use* is determinative of whether it is protected from taxation not its design. It matters less in this context what other types of property—money, pencils, stocks, bonds, are used for. It is what they are *designed and used* for that counts. It is too easily claimed that all property can be used to support religious activities. Property, other than real estate, to be protected from the State must be both used exclusively for religious purposes and be designed and made exclusively for religious purposes. For example, stained glass windows, church

organs, chalices and candlesticks, altars, hymnals and Bibles are designed and used for exclusively religious purposes. These, for the preservation of religious liberty, properly are exempt from taxation. Automobiles, private homes, stocks and bonds, parking lots, and business, while often "used" to support religious activities, are not designed for such use and are not ordinarily exclusively so used. These properties, even though they bring revenue, must be taxed when owned by churches just as they are when owned by secular organizations.

The requirement that real property be used exclusively for religious or worship-function purposes still leaves adequate room for local variations. The word "exclusively" can be interpreted broadly or narrowly in each of the fifty states with their several communities. The term "exclusively" will serve to eliminate activities which can reasonably be described as belonging to any additional category besides "religious." Such an activity as the operation of a parking lot open to all for a fee, obviously, is not one for exclusively religious purposes. A business organized to perform services such as permitting parishioners and others to park their cars may also serve God. But this merely means that the activity is pleasing in the eyes of the Lord.

We agree with Arvo Van Alystyne who pointed out in *Tax Exemption of Church Property:*

> "In some states, statutory provisions expressly deny exemption to otherwise qualified church property if income or revenue is derived therefrom." (p. 478).

In general, church property which produces income—even if the income is used exclusively for religious purposes—cannot be described as property used exclusively for religious purposes. Similarly, the word "religion" as used in the First Amendment avoids bringing under its umbrella activities which are not exclusively religious or would not have been considered so by the authors of these clauses. The "free exercise" protection was not directed at activities outside of "religion"—i.e., the relating of persons or things to "God",

or as Mr. Justice Douglas explains in *United States v. Ballard* (322 U.S. 72 at p. 87 (1944)): "Man's relation to his God was made no concern of the state." (Emphasis supplied)

It is unavoidable that any tax exemption which *Walz* permits to protect the exclusively religious functions of churches runs a risk of abuse in that there inevitably will be those who will attempt to extend the protection to activities other than religious, such as a parking lot operated for profit. The fundamental function of religion is to relate persons to God not to operate parking lots. God is a term not limited to the formal faiths of the Christian, Moslem or Judaist world, but is as broad as described in Salisbury's "Speaking of Politics" (1965)—available in this Supreme Court's Library.

> "A 'God' is any person, force or thing worshipped by a person or group of persons, the existence of which is beyond the scientifically verifiable, which has, or is described as having, an effective relationship with persons and things." (p. 264)

This distinction between the secular (parking lots) and the religious (worship, teaching) is one which would have been clear to the framers of the First Amendment but may not be so clear to our too sophisticated contemporaries. The draftees of the First Amendment carefully used the word "religion" not the word "church." This is a fine distinction—one more subtle than the difference between "religious" and "secular" (or nonreligious). Mr. Chief Justice Burger pointed out in *Walz* "that it is an essential part of adjudication to draw distinctions, including fine ones, in the process of interpreting the Constitution." We predict that the courts will have little difficulty determining when property is used for "religious" purposes and when property is used for commercial purposes, though church managers and treasures find this difficult.

This Court has at hand in the Library of Congress, in the original, Samuel Johnson's *A Dictionary of the English Language:* This is the same dictionary which James Madison had on his desk. In it the definitions are clear:

"Religion 1. Virtue, as founded upon reverence of God and expectation of future rewards and punishments. (If we consider it as directed against God, it is a breach of religion; if as to men, it is an offense against morality.) (South)

2. A system of divine faith and worship as opposite to others." x x x

"Divine 1. Partaking of the nature of God."

"God 1. The Supreme Being—God is a spirit, and they that worship him must worship him in spirit and truth. (John IV:24)"

Jefferson reiterated the then contemporary meaning of the term "religion" in his letter to the Danbury Baptist Association (8 Jeff. Works 113, cited in *Reynolds v. United States,* 98 U.S. 145, 164 (1878), where he wrote: ". . . religion is a matter which lies solely between man and his god . . ." This Court also recognized the definition found in Johnson's Dictionary and has limited the meaning of "religion" as Johnson did: "The term 'religion' has reference to one's views of his relation to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will . . ." (*Davis v. Beason,* 133 U.S. 333, 342 (1889)). John Locke stated in 1689, "I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other . . ." Locke, *A Letter Concerning Toleration,* in 35 Great Books of Western World (1952—cited in *Schempp,* supra p. 231.)

Today, it is more and more apparent that churches undertake many activities which are not only not exclusively religious but actually are distinguishing functions of secular organizations which operate in the fields of labor relations, health, business, secular education, charities, and the like. Churches often claim the constitutional protections of the "free exercise clause" but are unwilling to admit that the same activities and property come under the prohibitions

of the "establishment clause." For example, the unrelated business activities of churches are familiar to the general public and to this Court. They have been thoroughly spelled out in "The Churches: Their Riches, Revenues and Immunities," by Martin A. Larson and C. Stanley Lowell (1969). In addition, the constitutionality of the tax exemption afforded by federal statute to the unrelated business income of churches is being contested in the Federal District Court in New York City in *Americans United v. Straford Retreat House.* (U.S.D.C. Southern Dist. of N.Y. Civil Action N. 289-69). There it is contended that tax exemptions, other than on the exclusively religious properties and functions of the church, violate both the "establishment" and "free exercise" clauses of the Federal Constitution. It is also subject to litigation in the Federal District Court in Baltimore, Maryland, in *Seversmith v. Machiz.* (U.S.D.C. District of Maryland Civil Action N. 15756).

The cry against the financial privileges of churches sheltered by numerous forms of tax exemption is not directed against the universal tax exemption on property used for exclusively religious purposes (*Walz* and *Gibbons,* supra) but against the exemptions and privileges enjoyed for other types of property owned by churches. The real social danger from the tax-exempt incomes and properties of churches arises from their income-producing properties—their unrelated businesses—not from their property used exclusively for religious purposes.

In conclusion, we respectfully urge this Court, to further clarify the religious clauses of the First Amendment to point out that churches may not be aided by government preference for their business activities over the same business activities carried on by private commercial interests. We urge that this Court point out that when a church goes into business it leaves the protection of the First Amendment which covers its religious activities and must stand on its own feet along with other institutions in the market place

of finance and commerce. In this way, the state will ever be neutral in its relations with religion and fair in its treatment of those whose business efforts finance the freedoms, rights, and privileges of all—and more often than not whose generosity finances the churches themselves.

## CONCLUSION

For the reasons set forth herein, the decision of the Court below should be reversed.

Respectfully submitted,

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